IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 68 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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AMBALAL SARABHAI ENTERPRISES LTD.

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

MR B.D. KARIA for Petitioner No. 1

MR BB NAIK for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 05/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference pertaining to A.Y. 1979-80, in all four questions are referred. At the instance of the assessee the following two questions are referred for our opinion :

1. "Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding that the assessee was not entitled to claim exchange loss of Rs. 2,63,055/- as revenue expenditure and the Tribunal was justified in holding that the said expenditure was of capital in nature ?

2. Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding that guarantee commission of Rs. 6,176/- paid by the assessee was not allowable as revenue expenditure and was of capital in nature ?"

The following two questions are referred for our opinion at the instance of the Revenue :

3. "Whether in law and on facts the assessee is entitled to investment allowance on the amount of Rs. 2,63,055/- being exchange rate difference ?

4. Whether, in law and on facts, the assessee is entitled to investment allowance on bank guarantee commision payment of Rs. 6,176/- ?"

2. We have heard Mr. B.D. Karia, ld. advocate for Mr. R.K. Patel, for the assessee and Mr. B.B. Naik, ld. Senior Standing Counsel for the Revenue.

3. As far as question No.1 is concerned, our attention is invited to the decision of another Division Bench of this Court in C.I.T. Vs. Windsor Foods Ltd., 235 ITR 249, taking the view that the expenditure, incurred by an assessee who has purchased plant and machinery on credit and is required to pay additional amount on account of fluctuation in foreign exchange rates, is of capital nature. Following the aforesaid decision, our answer to question No.1 is in the affirmative, that is in favour of the Revenue and against the assessee.

4. Coming to question No.2, our attention is invited to the decision of the Apex Court in Additional CIT Vs.

Akkamamba Textiles Ltd., (1997) 227 ITR 464, taking the view that guarantee commission paid by an assessee to the banker/insurance company for ensuring deferred payment of the purchase consideration of machinery is an admissible deduction under Section 37 of the Income Tax Act.

Following the aforesaid decision, our answer to question No.2 is in the negative, that is in favour of the assessee and against the Revenue.

5. Coming to question No.3, our attention is invited to the decision of another Division Bench of this Court in the case of CIT vs. Windsor Foods Ltd., 235 ITR 249.

In view of the admitted fact that the investment allowance was being claimed on the purchase of plant and machinery made at Rs. 2,63,055/- after the year of purchase, and the aforesaid decision of this Court, our answer to question No.3 is in the negative, that is in favour of the Revenue and against the assessee.

6. Coming to the last question, that is question No.4, in view of our answer to question No.2 that the guarantee commission amount of Rs. 6,176/- is revenue expenditure, the question No.4 posed about investment allowance does not survive. Hence, we decline to answer this question.

7. The Reference accordingly stands disposed of with no order as to costs.

rmr. [ M.S. Shah, J.]

[ K.A. Puj, J.]